

MAY 27 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERA FAKALAWA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-72975

Agency No. A78-185-531

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Sera Fakalawa, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for asylum, withholding of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *see INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and we deny the petition.

The record does not compel the conclusion that Fakalawa has shown extraordinary circumstances to excuse the untimely filing of her asylum application. *See Ramadan v. Gonzales*, 479 F.3d 646, 656-58 (9th Cir. 2007); *see also* 8 C.F.R. § 208.4(a)(5). Accordingly, we deny the petition as to Fakalawa’s asylum claim.

Because Fakalawa testified that she only fears a life of poverty if she were to return to Fiji, substantial evidence supports the IJ’s and BIA’s conclusion that Fakalawa did not establish a clear probability of persecution. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1185 (9th Cir. 2003). Accordingly, Fakalawa’s withholding of removal claim is denied.

Finally, because Fakalawa has not shown that it is more likely than not that she will be tortured if she returned to Fiji, substantial evidence supports the IJ’s and BIA’s denial of CAT relief. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.